IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1942

ELLA G. WOOD, *Petitioner,*

vs.

THE FEDERAL LAND BANK OF OMAHA, NEBRASKA, et al, *Respondents,*

BRIEF OF PETITIONER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

OPINIONS BELOW

The sole and only question involved in this cause is whether the petitioner, Ella G. Wood, is a farmer within the definition of 75r of the Bankruptcy Act. The trial court held that she was a farmer. The Circuit Court held she was not a farmer, and reversed the judgment of the trial court—the District Court of Nebraska, Omaha division.

SPECIFICATIONS OF ERRORS

1. The Circuit Court erred in holding that under the facts in the record the petitioner, Ella G. Wood, was not a farmer within the definition of Section 75r.

2. The Circuit Court erred in giving to Section 75r a strict construction so as to defeat, rather than a liberal construction, so as to carry out the intent of Congress.

3. The Circuit Court erred in holding that the petitioner was primarily engaged in teaching rather than farming operations, and that her income from farming operations was less than from teaching. The finding of fact and conclusion of the lower court and the evidence is to the contrary.

4. The Circuit Court erred in holding that the income received from farming operations by the receiver of peti-

tioner's property was not part of her income. The lower court arrived at a contrary opinion, and we submit the lower court is correct.

5. The Circuit Court erred when it held that the petitioner had no farm equipment or livestock. The undisputed evidence is to the contrary.

6. The Circuit Court erred in reversing the decision and judgment of the trial court.

ARGUMENT

As we have seen the sole question involved on this appeal raised by the Circuit Court of Appeals, is whether petitioner is a farmer. It is whether in order to qualify as a farmer under Section 75r, one must reside upon a farm and till the soil with his own hands, or labor, or whether he can employ hired help and lease it to tenants. The question is whether the petitioner, if she cannot qualify under the first part of Section 75r, then can qualify under the second provision, if her income from farm operations exceeds that from teaching.

We feel that she can qualify under both. While she teaches school for seven months during the year, she resides on the property the balance of the year and directs farming operations. She does this personally and through her sister, Sarah Norton, as her agent. At the time she filed the Nebraska ranch was operated by hired help, her sister and herself. Later they leased it to a tenant. She resided on this farm since 1935, or 1936. She filed her petition in 1940. Tr. 57, 93, 94, 95, 96 and 97.

The land located in Iowa has been at the time of the filing, and still is, in the hands of a receiver, appointed by a State Court. This land is leased to tenants by the receiver, and it is from this that a large part of petitioner's income is derived. The trial court held that this income belonged to the petitioner. We submit to hold otherwise is absurd, but the Circuit Court failed to consider this income as belonging to the petitioner. It is true that the receiver applied it in the payment of debts, but that did not change the ownership

of the income at the source. Tr. 43, 171, 177, 185, 182, 183, 192, 193 and 207.

Ever since Section 75 of the Bankruptcy Act was passed to protect agriculture, over zealous mortgagees have attempted to have it misconstrued and narrowed in scope. This court, however, has given the Frazier-Lemke Act a liberal construction in numerous decisions. Yet the farmer had to battle in court at every turn of the road in order to get the benefits of this act. The pressure on the part of Federal agencies and other mortgagees has been so consistent as to unconsciously have caused some lower courts to become prejudiced against this legislation, and yet there is nothing new in this Act. It simply applies bankruptcy to agriculture.

SECTION 75r

Section 75r, when passed, read as follows: "(r) For the purpose of this section and section 202, the term "Farmer" means any individual who is personally bona fide engaged primarily in farming operations, *or the principal part of whose income is derived from farming operations*, and includes the personal representative of a deceased farmer; *and a farmer shall be deemed a resident of any county in which such farming operations occur.*" Sec. 203 r, Title 11 Bankruptcy U. S. Code 1934 edition.

Under this definition of a farmer some district courts held that a truck farmer, or a poultry farmer, or a stock raiser was not a farmer, because these people did not till the soil. When these decisions were brought to the attention of Congress, it promptly amended Section 75r to read as follows: "(r) for the purpose of this section, section 22 (b) and Section 202, the term "farmer" includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry, or live stock, or the production of poultry products or live stock products in their manufactured state, *or the principal part of whose income is derived from any one or more of the foregoing operations*, and includes the personal

representative of a deceased farmer; *and a farmer shall be deemed a resident of any county in which the farming operations occur.*" Section 203 (r) title 11—Bankruptcy, supplement 1 to the U. S. Code, 1934 edition, laws of the 74th Congress, First Session, 1935.

In reading the original and the amendment of 75r together, it becomes clear that the amendment enlarged the original definition because of the narrow and erroneous interpretation placed upon it by some District Courts. It is clear that for a person to come under the provisions of Section 75, he must either be an actual farmer—and that does not mean that he must till the land with his own hands—or the principal part of his income must be derived from farming operations.

In neither case is it necessary for him to reside on the farm, but the statute by express language makes him a resident of any county in which such farming operations occur. In fact he may have farm lands in different counties and he may live in a village or town. He is none the less a farmer if he operates and directs the farming operations, or if he leases them and the principal part of his income is derived from the farms.

In the case at bar the debtor can qualify under either one of the provisions of 75r. She is a farmer because she operates and directs the farming operations. This she does at times through contact with her sister, who is willing to help her. The sister is the instrumentality through which she at times directs the farming operations. What a person may do by himself he can do through an agent or a friend or relative.

In re Wright's Estate, 17 F. Supp. 908 (La). In that case the court held a farmer who owned a farm, but did not cultivate it personally, but farmed it *through tenants, or share croppers,* and who financed the tenants and the operations of the farm, who determined when and what crops should be planted, sold and marketed the crops, was a farmer within the provisions of Section 75. In this case the farm debtor also owned property in a city from which she received almost an equal amount of income.

In re Moser, 95 F. 944, the debtor personally worked on the farm and lived in a tent, and leased the house to a tenant, was held a farmer under Section 75.

In Hamburg Bank v. Kitchens, 116 F. (2d) 376 C.C.A. 8th (1940) the farm debtor leased most of his farm to another person, but lived on a small tract, was held to be farmer.

In the next place the farm debtor in the case at bar can also qualify under section 75 (r) because the principal part of her income is derived from farming operations—tilling of the soil.

In re Shockwiler, 17 F. Supp. 697, the court held that a housewife residing in Ohio, but owning land in Illinois, was a farmer within the provisions of Section 75 of the Bankruptcy Act because her principal income was derived from farming operations.

In the case of First National Bank vs. Beach, 301 U. S. 435, the Supreme Court of the United States, says: "We do not try to fix the meaning of either of the two branches of this definition, considered in the abstract. *The two are not equivalents. They were used by way of contrast. Occasions must have been in view when the receipts of income derived from farming operations would make a farmer out of some one who primarily was engaged in different activities.*" Again, "Beach, the respondent, must be held, when the facts are viewed in combination, to have been personally and primarily engaged in farming operations."

In that case the court says further: "To get a living out of the land *in one way or another is the thread of common purpose that binds the labor and the leases,* and enables us to find in them the tokens of the same vocation. In brief the man is seen to be a farmer by every test of common speech, though his income has been garnered in rents as well as products. We emphasize that fact afresh that the words of the statute to which meaning is to be given are not phrases of art with a changeless connotation. They have a color and a content that may vary with the setting."

The setting in this case is that Ella G. Wood, the farm debtor, lives a part of each year on the farm and occupies the same as her home and has her household goods and furniture there. She owns some live stock and some farm machinery. She has lived there as her home since 1935. She acquired it before the Frazier-Lemke Act was passed. She is not a speculator. She is a farmer. Tr. 93-97 incl.

She receives the principal part of her income out of farming operations. The income in 1940, when she filed, was $5,930.75. It is true that this was received by the receiver and applied on the mortgage, but that was her income, not the receiver's. It was applied to pay the debts on her property. Tr. 43. See also Tr. 113 and 207.

CONCLUSION

The trial court's findings of facts have not been questioned. They are undisputed. The conclusion of the trial court on questions of law has been challenged by the mortgagees, and is now before this court for determination.

The undisputed facts as established by the trial court are as follows:

"Ella G. Wood, a widow, past fifty-two years of age, upon the death of her husband, engaged in the work of teaching school in one of the primary grades of the public schools of Chattanooga, Tennessee. Her husband, Dr. Wood, died in the year 1919, and she took up that work shortly after his death. Sometime around the years 1932 or 1933, the exact date does not clearly appear, she acquired title to a stock ranch of some 1,200 or 1,500 acres in Holt County, Nebraska, and at or about the same time the title to a farm in Carroll and Green Counties, in Iowa.

"Some time after acquiring the Holt County ranch, she (fol. 319) established her residence thereon, and thereafter when her term of school expired, and her work was completed in that respect, she returned home to this ranch where she and her sister made their home. The evidence seems to clearly indicate that her legal residence was in Holt County, Nebraska, and that fact is not being seriously disputed by

the creditors. The Holt County ranch was worked part time by hired help, and part of the time by tenants. Pasture lands were used for grazing cattle taken in by the head per month. All of these lands were encumbered by mortgages.

"The debtor was not personally obligated on the mortgage notes. At or about the time she acquired the title to the Iowa land, foreclosure proceedings were commenced, and a receiver was appointed, charged with the duty and obligation of collecting the rentals and preserving the property. The landlord's share from the Iowa property was in the neighborhood of $1,500 per year. The amounts received by debtor from the Holt County land were inconsequential, ranging from around $150.00 up to $1,100 contracted for but not collected.

"The debtor received as wages for her labor as a school teacher $1,250.00 each term during the last years of her work. As stated above, these facts are not disputed, and consequently we have for decision only a question of law."

We submit that under these facts the petitioner is a farmer within the definition of Section 75r, and that the decision of the Circuit Court of Appeals should be reversed.

Respectfully submitted,

William Lemke,

Counselor for Petitioner.